



W.P.No.248 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.248 of 2015

and

M.P.No.1 of 2015

S.T.Rose Pesiya

.... Petitioner

vs

Tamil Nadu Civil Supplies
Corporation Ltd.,
rep. by the Managing Director,
Tamil Nadu Civil Supplies,
Kilpauk,
Chennai - 10.

.... Respondent

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records from the respondent and quash the order passed in proceedings No.Na.Ka.No.AD13/105546/2011 dated 03.09.2014 and consequently direct the respondent to select the petitioner for appointment to the post of Assistant Manager (Quality control) on the basis of the petitioner's performance in the selection process taken place on 05.01.2011 (written test) and 12.01.2011 (interview) with effect from the date of appointment of other candidates of the same selection with all monetary and service benefits.

For Petitioner : Mr.S.Selvraj

For Respondent : Mr.V.R.Thiagarajan



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ORDER

This Writ Petition has been filed challenging the order passed by the respondent, rejecting the claim of the petitioner for appointment to the post of Assistant Manager (Quality control) and consequently, direct the respondent to select the petitioner for appointment to the post of Assistant Manager (Quality control) on the basis of the petitioner's performance in the selection process taken place on 05.01.2011 (written test) and 12.01.2011 (interview) with effect from the date of appointment of other candidates of the same selection with all monetary and service benefits.

2. The brief facts of the case of the petitioner are as follows:

i) The petitioner was a Post Graduate Degree holder in Botany and she was sponsored by the Executive Employment Office, Chennai for the post of Assistant Manager (Quality Control). She was asked to appear for the written test on 05.01.2011 at Chennai and she also appeared for the written test and further on 08.01.2011, she was informed through mobile phone that she was selected for interview to the held on 12.01.2011 and she attended the interview at the Head Office of the respondent Corporation, where she was asked to produce 5 sets of all testimonials and accordingly, she produced the



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same. But thereafter, there was no information from the respondent.

ii) The petitioner came to know that for 30 vacancies, only 18 were filled up and 12 were not filled up for no reason. Moreover, the candidates with lower qualification and of lesser performance than the petitioner was appointed to the post of Assistant Manager. Therefore, she sent a representation dated 29.03.2011 and since there was no reply, she filed a writ petition in W.P.(MD)No.11159/2011 and the same as disposed of with a direction to consider the claim of the petitioner and pass appropriate order. The respondent passed the impugned on 03.09.2014, rejecting the claim of the petitioner. Hence, the present writ petition.

3. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent Corporation.

4. i) Learned counsel for the petitioner would submit that the impugned order was passed is in violation of the order passed by this Court in W.P.(MD).No.11159 of 2001 dated 21.06.2014. This Court has given a positive direction to appoint the petitioner in the post of Assistant Manager (Quality control). The defence of communal rotation taken by the respondent is impliedly overruled by the order dated 21.06.2014, passed by this Court.



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Further, the respondent has not given an opportunity of hearing the petitioner before passing the impugned order.

ii) Learned counsel would further submit that the respondent cannot reject the claim of the petitioner on the ground that the petitioner belongs to general category & non-priority, because the petitioner belongs to backward class and the petitioner should have been considered as a backward class candidate. The respondent cannot reject the claim of the petitioner stating that the employment exchange has sent the name of the petitioner in general category non-priority division, for the reason that the employment exchange cannot categorize candidate. It is only the respondent who can choose the candidate on communal rotation. The selection is based on marks, taking into consideration the highest mark, the respondent has to apply communal quota. The number of candidates chosen by employment exchange as per communal rotation cannot be the basis for selection of candidate after the candidate passes the selection process. Among the successful candidate, the respondent has to fix the communal quota. The respondent does not have any power to select a candidate who has scored less mark than the petitioner and fix them under communal rotation.

iii) Learned counsel would further submit that since the petitioner has filed the earlier writ petition seeking a direction to appoint her to the psst of



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Assistant Manager, the respondent with malafide intention failed to appoint the petitioner. Hence, he would pray to allow the writ petition.

5. Per contra, learned counsel for the respondent Corporation would submit that the petitioner belongs to GT category as per the Employment list. The four candidates already selection under GT category have obtained higher marks than the petitioner. Thus, the petitioner's name has not been considered in the merit list. The orders of appointment have been issued based on communal rotation and merits and the individuals are working in the respondent Corporation with effect from 04.02.2011. Hence, he would pray to dismiss the above writ petition.

6. This Court considered the submissions made on either side and perused the materials available on record.

7. From the perusal of the materials available on record, it is seen that the petitioner belongs to BC community. However, she was sponsored through the employment exchange as general category. This Court, vide order dated 27.06.2014, taking into consideration all the material facts and considering the claim of the petitioner, specifically directed to the respondent to consider the



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petitioner's claim and pass appropriate orders. Further, in the order passed by this Court dated 27.06.2014, based on the submission made by the 1st respondent that the individuals viz., 2nd and 3rd respondents, after their selection resigned their job, and considering the vacancy position available due to their resignation, directed the respondent to consider the claim of the petitioner and pass appropriate order. However, the respondent rejected the claim of appoint the petitioner stating that she belongs to GT category as per the employment list.

8. When the candidates selected under priority category had resigned or not joined the post, the petitioner's claim ought to have been considered as per the direction issued by this Court. The defence of communal rotation taken by the respondent cannot be countenanced. As per the community certificate produced by the petitioner, it is seen that she belongs to backward class and the respondent cannot reject the petitioner's claim that the employment exchange has sent the name of the petitioner in general category(non-priority division). It is only for the respondent to choose the candidate on communal rotation. Further, it is seen from the records that the 2nd & 3rd respondents namely, S.Joseph Raj and M.Meena, belongs to BC community and had scored 41% and 40% respectively whereas the petitioner has scored 42%. Thus, the



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respondent ought to have considered the petitioner under priority category instead of treating her under non-priority category.

9. For the foregoing discussions, this Court is of the opinion that the impugned order is liable to be set aside. Accordingly, the impugned order dated 03.09.2014 is hereby set aside. The Writ Petition is allowed. The respondent is directed to consider the petitioner for appointment to the post of Assistant Manager (Quality Control) and pass appropriate orders within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

10.04.2023

Index:Yes/No
Speaking/Non-speaking order
vsi

To

Tamil Nadu Civil Supplies
Corporation Ltd.,
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Kilpauk,
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J.NISHA BANU,J.

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